

State of California



Fair Political Practices Commission

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• • Administration • •
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322-6444

March 19, 1984

Diane M. Lee
City Attorney
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

Re: Your Request for Advice
Our No. A-84-032

Dear Ms. Lee:

You have requested advice regarding possible disqualification requirements for the Mayor and three Planning Commissioners with respect to the impending Palo Alto downtown study.

CONCLUSION

As a general proposition, it is too early in the process for us to provide specific advice regarding the officials on whose behalf you have requested advice. Once the range of decisions has been defined, the standards enunciated below can be applied to determine where disqualification will be required, if at all. In most instances, it is not now possible to state that the "public generally" exception will apply. However, once a specific decision can be focused on this exception may be applicable.

FACTS

You have provided the following background facts in your letter.

The City of Palo Alto is about to begin a downtown study which will consist of a review and analysis of its 35-block downtown area in order to determine (1) acceptable levels of development in the downtown, (2) appropriate parking policies for new development, and (3) appropriate mix of uses. In addition, the study will examine issues relating to (1) maintenance of retail vitality, (2)

preservation of historic structures, and (3) utilization of unique design opportunities.

The study is expected to generate citywide levels of interest and participation. As a result, its scope will be substantially more comprehensive than typical neighborhood or special district planning studies. This study will be presented to the Commission for recommendation to the Council, and to the Council for its approval.

Within the proposed study area, there are approximately 350 parcels of property. Of these, about 325 are zoned CC (Community Commercial), CS (Service Commercial) or are contiguous, commercial PC (Planned Community) zones. The remaining 25 parcels are zoned PF (Public Facilities) and are owned or used by public agencies or utilities. The number of property owners in the study area is approximately 250. These figures for downtown commercial parcels and owners compare with approximately 650 commercially zoned (CC, CS and commercial PC) parcels citywide and approximately 500 property owners.

QUESTIONS

Your letter poses the following questions:

Are Planning Commissioners and City Council Members prohibited from making, participating in making, or in any way using their official position to influence a City decision regarding a downtown study, where the final recommendation of that study may ultimately affect the future development of the Downtown of Palo Alto when:

(a) The Mayor and one member of the Planning Commission are partners in a law firm which represents the following clients:

(1) a business entity lessee which leases one parcel in the study area where it conducts its business and leases another parcel with an option to purchase that parcel.

(2) Two individuals who each own a one-quarter interest in a parcel of real property in the study area.

(3) Two of the partners in a partnership which owns one parcel of real property in the study area.

This question relates to Mayor Klein and Commissioner McCown.

(b) A Planning Commissioner, who is an architect, owns an interest in developed real property located in the study area and has two clients who own property within the study area. This question relates to Commissioner John Northway.

(c) A Planning Commissioner, Mark Chandler, who is an attorney, is employed by Jim E. Baer, Inc., a corporation in which Mr. Baer is the sole shareholder. Mr. Chandler owns no stock. Mr. Baer, as an individual, is a general partner in two limited partnerships which own commercial property in the study area. Each partnership owns one parcel. Both are developed. The corporation represents five clients who own eight parcels in the study area.

The financial interests for the officials described above exceed the threshold amounts specified in Government Code Section 87103.

ANALYSIS

Generally, the Political Reform Act^{1/} requires that public officials refrain from making, participating in making or using their official position to influence governmental decisions in which they have a financial interest. A financial interest is present in a decision if the standards of Section 87103 are met.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

^{1/} Government Code Sections 81000-91014. All regulation references are to the California Administrative Code, Title 2, Sections 18110-18916.

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

(Section 87013.)

Because the downtown study is only just now taking shape we do not have sufficient facts to give you definitive answers to each of your questions. We will set forth the basic analyses to be employed and will respond to your request for our thoughts on the "public generally" issue. On this latter point, you have advised that there are approximately 18,500 parcels within the City of Palo Alto which have approximately 15,900 owners.

Taking your questions in order, we turn first to the situations of Mayor and Klein and Planning Commissioner McCown. They are both partners in a law firm representing clients who are deemed to be sources of income within the meaning of Section 87103(c). (It is assumed that each owns 10% or more of the firm.) One of those sources of income (question (a)(1)) is a business entity which leases one parcel where it conducts

business and holds an option to purchase another parcel. The parcels are both situated within the study area.

As to decisions which will affect the parcels which their source of income leases or has an option to purchase, Mayor Klein and Commissioner McCown will have to disqualify themselves if the effect on their client will be material as defined in 2 Cal. Adm. Code Section 18702(b) (1)^{2/} and will distinguishable from the effect upon a significant segment of the public generally.^{3/} It is important to note that materiality of the decision's effect is to be measured against the source of the income under 18702(b) (1) rather than against the property under 18702(b) (2).

With respect to the leased parcel, decisions affecting all parcels in the study area would be subject to the "public generally" exception pursuant to the Commission's analysis in its Owen Opinion, 2 FPPC Opinions 77, No. 76-005 (June 2, 1976) which dealt with a business with only a leasehold interest. (See, analysis to Question (c) in the Owen Opinion, supra at 82-83.) However, with respect to the parcel where the client holds an option to purchase, this ownership interest probably will not be subject to the "public generally" exception. (See, analysis to Question (b) in the Owen Opinion, supra at 81-82.)

Turning next to Question (a) (2), other sources of income to Mayor Klein and Commissioner McCown are two individuals who each own a one-quarter interest in a parcel of real property in the study area. The issue here is the same as above. Will decisions on the study have a reasonably foreseeable material financial effect upon either of these two sources of income? In this case, the sources are individuals; consequently, the test to be applied is that found in Section 18702(b) (3) (D). If the effect upon the individual will be significant, then disqualification would be required unless the effects upon a significant segment of the general public were substantially the same as on these two individuals. Section 18703. The analysis

^{2/} Effects of decisions on sources of income are dealt with in 2 Cal. Adm. Code Section 18702(b) (3); however, subdivision (b) (3) (C) refers back to subdivision (b) (1) in cases where the source of income is a business entity.

^{3/} See, 2 Cal. Am. Code Section 18703.

of question (b) in the Owen Opinion does not permit us to rule, at this time, that the "public generally" exception would apply.

The analysis for your question (a) (3) is the same as for (a) (2), above; however, the prospects for a material financial effect upon the partners is more remote because of the fact that the partnership owns the parcel, rather than the individuals.

We turn next to your question (b), relating to Planning Commissioner John Northway. He is an architect who owns an interest in a developed parcel in the study area and has two clients who each own property in the area. As to the property which he owns, the applicable test is found in Section 18702(b) (2), and should be used to determine if the decision's effect will be material. As to his clients, the test is the same as those enunciated in response to question (a), above. Each of these would be subject to the analysis to question (b) in the Owen Opinion. In addition to his real property interests, Mr. Northway should analyze potential conflicts which may arise because of his business. If his architectural business would be affected, he may have to disqualify himself. See, Thorner Opinion 1 FPPC Opinions 198, No. 75-089 (December 4, 1975) and Oglesby Opinion 1 FPPC Opinions 71, No. 75-083 (July 2, 1975). Furthermore, he also may not use his official position to influence decisions. See advice letter to Thomas Harron, No. A-83-184, September 13, 1983, copy enclosed.

Lastly, we turn to your question (c) regarding Planning Commissioner Mark Chandler. Mr. Chandler is an attorney whose client is a corporation, whose sole owner is a general partner in two limited partnerships which own one parcel each of commercial property in the study area. In addition, the corporation represents five clients who own eight parcels in the study area.

We have previously advised that where a corporate entity is a source of income (as here) but is controlled by one person (as here) the person will also be treated as a source of income. See, advice letter to Daniel S. Hentschke, No. A-80-069, March 5, 1980. Consequently, Mr. Chandler will have to examine the reasonably foreseeable effects of his decisions on Mr. Baer as well as on Baer, Inc. If effects upon the parcels owned by Mr. Baer's partnership will result in an impact upon him, then that effect will have to be analyzed under Section 18702(b) (3).

We have no information as to what Baer, Inc., does by way of representation of the five clients who own the eight parcels in

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the study area. If that representation^{4/} is such that Baer, Inc's. income would be affected in a material manner by any decision, then Mr. Chandler would have to disqualify himself. Again, the issue of whether the effects will be material must be examined in light of the applicable regulations' provisions, as discussed in the responses to your previous questions above.

In closing, once the issues become more focused and the role of each of these officials becomes clearer, please do not hesitate to contact us again so that we may provide more specific advice. If you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

^{4/} For instance, if Baer, Inc., represents the land-owners on matters where Baer, Inc's., income will be affected by various land use decisions, then a material financial effect upon Baer, Inc., could foreseeably result from certain decisions affecting its clients' parcels of property.



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FEB 17 2 22 PM '84

February 16, 1984

Ms. Susan Harrigan
Legal Division
State of California
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: Request for Advice Pursuant to
Government Code Section 83114(b)

Dear Ms. Harrigan:

I hereby request advice pursuant to Government Code Section 83114(b) on behalf of Mayor Larry Klein and Planning Commissioners Jean McCown, John Northway, and Mark Chandler.

The City of Palo Alto is about to begin a downtown study which will consist of a review and analysis of its 35-block downtown area in order to determine (1) acceptable levels of development in the downtown, (2) appropriate parking policies for new development, and (3) appropriate mix of uses. In addition, the study will examine issues relating to (1) maintenance of retail vitality, (2) preservation of historic structures, and (3) utilization of unique design opportunities.

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The financial interests for the officials described above exceed the threshold amounts specified in Government Code Section 87103.

If I, or any of the public officials enumerated in this letter, can provide you with any additional information, please do not hesitate to contact me.

Very truly yours,



DIANE M. LEE
City Attorney

DML:se

cc: Larry Klein
Jean McCown
John Northway
Mark Chandler